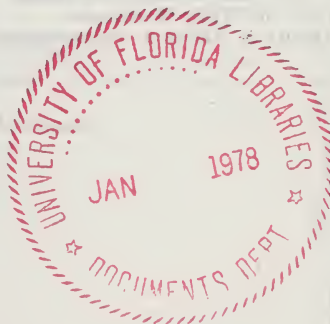


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THE ARMS EXPORT CONTROL ACT



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The Arms Export Control Act

AN ACT To consolidate and revise foreign assistance legislation relating to reimbursable military exports

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "Arms Export Control Act".

Chapter 1—FOREIGN AND NATIONAL SECURITY POLICY OBJECTIVES AND RESTRAINTS

SEC. 1. THE NEED FOR INTERNATIONAL DEFENSE COOPERATION AND MILITARY EXPORT CONTROLS.—As declared by the Congress in the Arms Control and Disarmament Act, an ultimate goal of the United States continues to be a world which is free from the scourge of war and the dangers and burdens of armaments; in which the use of force has been subordinated to the rule of law; and in which international adjustments to a changing world are achieved peacefully. In furtherance of that goal, it remains the policy of the United States to encourage regional arms control and disarmament agreements and to discourage arms races.

The Congress recognizes, however, that the United States and other free and independent countries continue to have valid requirements for effective and mutually beneficial defense relationships in order to maintain and foster the environment of international peace and security essential to social, economic, and political progress. Because of the growing cost and complexity of defense equipment, it is increasingly difficult and uneconomic for any country, particularly a developing country, to fill all of its legitimate defense requirements from its own design and production base. The need for international defense cooperation among the United States and those friendly countries to which it is allied by mutual defense treaties is especially important, since the effectiveness of their armed forces to act in concert to deter or defeat aggression is directly related to the operational compatibility of their defense equipment.

Accordingly, it remains the policy of the United States to facilitate the common defense by entering into international arrangements with friendly countries which further the objective of applying agreed resources of each country to programs and projects of cooperative exchange of data, research, development, production, procurement, and logistics support to achieve specific national defense requirements and objectives of mutual concern. To this end, this Act authorizes sales by the United States Government to friendly countries having sufficient wealth to maintain and equip their own military forces at adequate strength, or to assume progressively larger shares of the costs thereof, without undue burden to their economies, in accordance with

the restraints and control measures specified herein and in furtherance of the security objectives of the United States and of the purposes and principles of the United Nations Charter.

It is the sense of the Congress that all such sales be approved only when they are consistent with the foreign policy interests of the United States, the purposes of the foreign assistance program of the United States as embodied in the Foreign Assistance Act of 1961, as amended, the extent and character of the military requirement, and the economic and financial capability of the recipient country, with particular regard being given, where appropriate, to proper balance among such sales, grant military assistance, and economic assistance as well as to the impact of the sales on programs of social and economic development and on existing or incipient arms races.

It is further the sense of Congress that sales and guaranties under sections 21, 22, 23, and 24, shall not be approved where they would have the effect of arming military dictators who are denying the growth of fundamental rights or social progress to their own people: *Provided*, That the President may waive this limitation when he determines it would be important to the security of the United States, and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations in the Senate.

It shall be the policy of the United States to exert leadership in the world community to bring about arrangements for reducing the international trade in implements of war and to lessen the danger of outbreak of regional conflict and the burdens of armaments. United States programs for or procedures governing the export, sale, and grant of defense articles and defense services to foreign countries and international organizations shall be administered in a manner which will carry out this policy.

It is the sense of the Congress that the President should seek to initiate multilateral discussions for the purpose of reaching agreements among the principal arms suppliers and arms purchasers and other countries with respect to the control of the international trade in armaments. It is further the sense of Congress that the President should work actively with all nations to check and control the international sale and distribution of conventional weapons of death and destruction and to encourage regional arms control arrangements. In furtherance of this policy, the President should undertake a concerted effort to convene an international conference of major arms-supplying and arms-purchasing nations which shall consider measures to limit conventional arms transfers in the interest of international peace and stability.

It is the sense of the Congress that the aggregate value of defense articles and defense services—

(1) which are sold under section 21 or section 22 of this Act;
or

(2) which are licensed or approved for export under section 38 of this Act to, for the use, or for benefit of the armed forces, police, intelligence, or other internal security forces of a foreign country or international organization under a commercial sales contract:

in any fiscal year should not exceed current levels.

SEC. 2. COORDINATION WITH FOREIGN POLICY.—(a) Nothing contained in this Act shall be construed to infringe upon the powers or functions of the Secretary of State.

(b) Under the direction of the President, the Secretary of State, taking into account other United States activities abroad, such as military assistance, economic assistance, and food for freedom, shall be responsible for the continuous supervision and general direction of sales and exports under this Act, including, but not limited to, determining whether there shall be a sale to a country and the amount thereof, and whether there shall be delivery or other performance under such sale or export, to the end that sales and exports are integrated with other United States activities and the foreign policy of the United States is best served thereby.

(c) The President shall prescribe appropriate procedures to assure coordination among representatives of the United States Government in each country, under the leadership of the Chief of the United States Diplomatic Mission. The Chief of the diplomatic mission shall make sure that recommendations of such representatives pertaining to sales are coordinated with political and economic considerations, and his comments shall accompany such recommendations if he so desires.

SEC. 3. ELIGIBILITY.—(a) No defense article or defense service shall be sold by the United States Government under this Act to any country or international organization unless—

(1) the President finds that the furnishing of defense articles and defense services to such country or international organization will strengthen the security of the United States and promote world peace;

(2) the country or international organization shall have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it to anyone not an officer, employee, or agent of that country or international organization and not to use or permit the use of such article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained;

(3) the country or international organization shall have agreed that it will maintain the security of such article and will provide substantially the same degree of security protection afforded to such article by the United States Government; and

(4) the country or international organization is otherwise eligible to purchase defense articles or defense services.

In considering a request for approval of any transfer of any weapon, weapons system, munitions, aircraft, military boat, military vessel, or other implement of war to another country, the President shall not give his consent under paragraph (2) to the transfer unless the United States itself would transfer the defense article under consideration to that country. In addition, the President shall not give his consent under paragraph (2) to the transfer of any significant defense articles on the United States Munitions List unless the foreign country requesting consent to transfer agrees to demilitarize such defense articles prior to transfer, or the proposed recipient foreign country provides a commitment in writing to the United States Government

that it will not transfer such defense articles, if not demilitarized, to any other foreign country or person without first obtaining the consent of the President. The President shall promptly submit a report to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate on the implementation of each agreement entered into pursuant to clause (2) of this subsection.

(b) No sales, credits, or guaranties shall be made or extended under this Act to any country during a period of one year after such country seizes, or takes into custody, or fines an American fishing vessel for engaging in fishing more than twelve miles from the coast of that country. The President may waive the provisions of this subsection when he determines it to be important to the security of the United States or he receives reasonable assurances from the country involved that future violations will not occur, and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate. The provisions of this subsection shall not be applicable in any case governed by any international agreement to which the United States is a party.

(c) (1) (A) No credits (including participations in credits) may be issued and no guaranties may be extended for any foreign country under this Act as hereinafter provided, if such country uses defense articles or defense services furnished under this Act, or any predecessor Act, in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act (i) by using such articles or services for a purpose not authorized under section 4 or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 4 for a purpose not authorized under such agreement; (ii) by transferring such articles or services to, or permitting any use of such articles or services by, anyone not an officer, employee, or agent of the recipient country without the consent of the President; or (iii) by failing to maintain the security of such articles or services.

(B) No cash sales or deliveries pursuant to previous sales may be made with respect to any foreign country under this Act as hereinafter provided, if such country uses defense articles or defense services furnished under this Act, or any predecessor Act, in substantial violation (either in terms of quantity or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act by using such articles or services for a purpose not authorized under section 4 or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 4, for a purpose not authorized under such agreement.

(2) The President shall report to the Congress promptly upon the receipt of information that a violation described in paragraph (1) of this subsection may have occurred.

(3) (A) A country shall be deemed to be ineligible under subparagraph (A) of paragraph (1) of this subsection, or both subparagraphs (A) and (B) of such paragraph in the case of a violation described

in both such paragraphs, if the President so determines and so reports in writing to the Congress, or if the Congress so determines by joint resolution.

(B) Notwithstanding a determination by the President of ineligibility under subparagraph (B) of paragraph (1) of this subsection, cash sales and deliveries pursuant to previous sales may be made if the President certifies in writing to the Congress that a termination thereof would have significant adverse impact on United States security, unless the Congress adopts or has adopted a joint resolution pursuant to subparagraph (A) of this paragraph with respect to such ineligibility.

(4) A country shall remain ineligible in accordance with paragraph (1) of this subsection until such time as—

(A) the President determines that the violation has ceased; and

(B) the country concerned has given assurances satisfactory to the President that such violation will not recur.

(d) The President may not give his consent under paragraph (2) of subsection (a) or under the third sentence of such subsection to a transfer of a defense article, or related training or other defense service, sold under this Act and may not give his consent to such a transfer under section 505(a)(1) or 505(a)(4) of the Foreign Assistance Act of 1961 unless, 30 days prior to giving such consent, the President submits to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a written certification with respect to such proposed transfer containing—

(1) the name of the country or international organization proposing to make such transfer,

(2) a description of the defense article or related training or other defense service proposed to be transferred, including the original acquisition cost of such defense article or related training or other defense service,

(3) the name of the proposed recipient of such defense article or related training or other defense service,

(4) the reasons for such proposed transfer, and

(5) the date on which such transfer is proposed to be made.

Any certification submitted to Congress pursuant to this subsection shall be unclassified, except that information regarding the dollar value and number of defense articles, or related training or other defense services, proposed to be transferred may be classified if public disclosure thereof would be clearly detrimental to the security of the United States.

(e) If the President receives any information that a transfer of any defense article, or related training or other defense service, has been made without his consent as required under this section or under section 505 of the Foreign Assistance Act of 1961, he shall report such information immediately to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 4. PURPOSES FOR WHICH MILITARY SALES BY THE UNITED STATES ARE AUTHORIZED.—Defense articles and defense services shall be sold by the United States Government under this Act to friendly countries

solely for internal security, for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. It is the sense of the Congress that such foreign military forces should not be maintained or established solely for civic action activities and that such civic action activities not significantly detract from the capability of the military forces to perform their military missions and be coordinated with and form part of the total economic and social development effort: *Provided*, That none of the funds contained in this authorization shall be used to guarantee, or extend credit, or participate in an extension of credit in connection with any sale of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, to any underdeveloped country other than Greece, Turkey, Iran, Israel, the Republic of China, the Philippines, and Korea unless the President determines that such financing is important to the national security of the United States and reports within thirty days each such determination to the Congress.

SEC. 5. PROHIBITION AGAINST DISCRIMINATION.—(a) It is the policy of the United States that no sales should be made, and no credits (including participations in credits) or guaranties extended to or for any foreign country, the laws, regulations, official policies, or governmental practices of which prevent any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) from participating in the furnishing of defense articles or defense services under this Act on the basis of race, religion, national origin, or sex.

(b)(1) No agency performing functions under this Act shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(2) Each contract entered into by any such agency for the performance of any function under this Act shall contain a provision to the effect that no person, partnership, corporation, or other entity performing functions pursuant to such contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(c) The President shall promptly transmit reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate concerning any instance in which any United States person (as defined in section 7701(a)(30) of the Internal Revenue Code of 1954) is prevented by a foreign government on the basis of race, religion, national origin, or sex, from participating

in the performance of any sale or licensed transaction under this Act. Such reports shall include (1) a description of the facts and circumstances of any such discrimination, (2) the response thereto on the part of the United States or any agency or employee thereof, and (3) the result of such response, if any.

(d) (1) Upon the request of the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives, the President shall, within 60 days after receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Coordinator for Human Rights and Humanitarian Affairs, with respect to the country designated in such request, setting forth—

(A) all the available information about the exclusionary policies or practices of the government of such country when such policies or practices are based upon race, religion, national origin or sex and prevent any such person from participating in the performance of any sale or licensed transaction under this Act;

(B) the response of the United States thereto and the results of such response;

(C) whether, in the opinion of the President, notwithstanding any such policies or practices—

(i) extraordinary circumstances exist which necessitate a continuation of such sale or licensed transaction, and, if so, a description of such circumstances and the extent to which such sale or licensed transaction should be continued (subject to such conditions as Congress may impose under this section), and

(ii) on all the facts it is in the national interest of the United States to continue such sale or licensed transaction; and

(D) such other information as such committee may request.

(2) In the event a statement with respect to a sale or licensed transaction is requested pursuant to paragraph (1) of this subsection but is not transmitted in accordance therewith within 60 days after receipt of such request, such sale or licensed transaction shall be suspended unless and until such statement is transmitted.

(3) (A) In the event a statement with respect to a sale or licensed transaction is transmitted under paragraph (1) of this subsection, the Congress may at any time thereafter adopt a joint resolution terminating or restricting such sale or licensed transaction.

(B) Any such resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(C) The term "certification", as used in section 601 of such Act, means, for the purposes of this paragraph, a statement transmitted under paragraph (1) of this subsection.

Chapter 2—FOREIGN MILITARY SALES AUTHORIZATIONS

SEC. 21. SALES FROM STOCKS.—(a) The President may sell defense articles and defense services from the stocks of the Department of Defense to any eligible country or international organization if such country or international organization agrees to pay in United States dollars—

(1) in the case of a defense article not intended to be replaced at the time such agreement is entered into, not less than the actual value thereof;

(2) in the case of a defense article intended to be replaced at the time such agreement is entered into, the estimated cost of replacement of such article, including the contract or production costs less any depreciation in the value of such article; or

(3) in the case of the sale of a defense service, the full cost to the United States Government of furnishing such service.

(b) Except as provided by subsection (d) of this section, payment shall be made in advance or, if the President determines it to be in the national interest, upon delivery of the defense article or rendering of the defense service.

(c) Personnel performing defense services sold under this Act may not perform any duties of a combatant nature, including any duties related to training, advising, or otherwise providing assistance regarding combat activities, outside the United States in connection with the performance of those defense services.

(d) If the President determines it to be in the national interest pursuant to subsection (b) of this section, billings for sales made under letters of offer issued under this section after the enactment of this subsection may be dated and issued upon delivery of the defense article or rendering of the defense service and shall be due and payable upon receipt thereof by the purchasing country or international organization. Interest shall be charged on any net amount due and payable which is not paid within sixty days after the date of such billing. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the billing and shall be computed from the date of billing. The President may extend such sixty-day period to one hundred and twenty days if he determines that emergency requirements of the purchaser for acquisition of such defense articles or defense services exceed the ready availability to the purchaser of funds sufficient to pay the United States in full for them within such sixty-day period and submits that determination to the Congress together with a special emergency request for the authorization and appropriation of additional funds to finance such purchases under this Act.

(e) (1) After September 30, 1976, letters of offer for the sale of defense articles or for the sale of defense services that are issued pursuant to this section or pursuant to section 22 of this Act shall include appropriate charges for—

(A) administrative services, calculated on an average percentage basis to recover the full estimated costs of administration of sales made under this Act to all purchasers of such articles and services;

(B) any use of plant and production equipment in connection with such defense articles; and

(C) a proportionate amount of any nonrecurring costs of research, development, and production of major defense equipment.

(2) The President may reduce or waive the charge or charges which would otherwise be considered appropriate under paragraphs (1) (B)

and (1)(C) for particular sales that would, if made, significantly advance United States Government interests in North Atlantic Treaty Organization standardization, or foreign procurement in the United States under coproduction arrangements.

(f) Any contracts entered into between the United States and a foreign country under the authority of this section or section 22 of this Act shall be prepared in a manner which will permit them to be made available for public inspection to the fullest extent possible consistent with the national security of the United States.

(g) In carrying out section 814 of the Act of October 7, 1975 (Public Law 94-106), the President may enter into North Atlantic Treaty Organization standardization agreements for the cooperative furnishing of training on a bilateral or multilateral basis, if the financial principles of such agreements are based on reciprocity. Such agreements shall include reimbursement for all direct costs but may exclude reimbursement for indirect costs, administrative surcharges, and costs of billeting of trainees (except to the extent that members of the United States Armed Forces occupying comparable accommodations are charged for such accommodations by the United States). Each such agreement shall be transmitted promptly to the Speaker of the House of Representatives and the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate.

(h)(1) Sales of defense articles and defense services which could have significant adverse effect on the combat readiness of the Armed Forces of the United States shall be kept to an absolute minimum. The President shall transmit to the Speaker of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate on the same day a written statement giving a complete explanation with respect to any proposal to sell, under this section, any defense articles or defense services if such sale could have a significant adverse effect on the combat readiness of the Armed Forces of the United States. Each such statement shall be unclassified except to the extent that public disclosure of any item of information contained therein would be clearly detrimental to the security of the United States. Any necessarily classified information shall be confined to a supplemental report. Each such statement shall include an explanation relating to only one such proposal to sell and shall set forth—

(A) the country or international organization to which the sale is proposed to be made;

(B) the amount of the proposed sale;

(C) a description of the defense article or service proposed to be sold;

(D) a full description of the impact which the proposed sale will have on the Armed Forces of the United States; and

(E) a justification for such proposed sale, including a certification that such sale is important to the security of the United States.

A certification described in subparagraph (E) shall take effect on the date on which such certification is transmitted and shall remain in effect for not to exceed one year.

(2) No delivery may be made under any sale which is required to be reported under paragraph (1) of this subsection unless the certifica-

tion required to be transmitted by paragraph (E) of paragraph (1) is in effect.

SEC. 22. PROCUREMENT FOR CASH SALES.—(a) Except as otherwise provided in this section, the President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of defense articles or defense services for sale for United States dollars to any foreign country or international organization if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(b) The President may, if he determines it to be in the national interest, issue letters of offer under this section which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within one hundred and twenty days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this Act. Appropriations available to the Department of Defense may be used to meet the payments required by the contracts for the procurement of defense articles and defense services and shall be reimbursed by the amounts subsequently received from the country or international organization to whom articles or services are sold.

SEC. 23. CREDIT SALES.—The President is authorized to finance procurements of defense articles and defense services by friendly foreign countries and international organizations on terms requiring the payment to the United States Government in United States dollars of—

(1) the value of such articles or services within a period not to exceed twelve years after the delivery of such articles or the rendering of such services; and

(2) interest on the unpaid balance of that obligation for payment of the value of such articles or services, at a rate equivalent to the current average interest rate, as of the last day of the month

preceding the financing of such procurement, that the United States Government pays on outstanding marketable obligations of comparable maturity, unless the President certifies to Congress that the national interest requires a lesser rate of interest and states in the certification the lesser rate so required and the justification therefor.

SEC. 24. GUARANTIES.—(a) The President may guarantee any individual, corporation, partnership, or other juridical entity doing business in the United States (excluding United States Government agencies other than the Federal Financing Bank) against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles and defense services to friendly countries and international organizations. Fees shall be charged for such guaranties.

(b) The President may sell to any individual, corporation, partnership, or other juridical entity (excluding United States Government agencies other than the Federal Financing Bank) promissory notes issued by friendly countries and international organizations as evidence of their obligations to make repayments to the United States on account of credit sales financed under section 23, and may guarantee payment thereof.

(c) Funds made available to carry out this Act shall be obligated in an amount equal to 10 per centum of the principal amount of contractual liability related to any guaranty issued under this section, and all the funds so obligated shall constitute a single reserve for the payment of claims under such guaranties. Any funds so obligated which are deobligated from time to time during any current fiscal year as being in excess of the amount necessary to maintain a fractional reserve of 10 per centum of the principal amount of contractual liability under outstanding guaranties shall be transferred to the general fund of the Treasury. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States.

SEC. 25. ANNUAL ESTIMATE AND JUSTIFICATION FOR SALES PROGRAM.—(a) The President shall transmit to the Congress, as a part of the presentation materials for security assistance programs proposed for each fiscal year, a report which sets forth—

(1) an estimate of the amount of sales expected to be made to each country under sections 21 and 22 of this Act, including a detailed explanation of the foreign policy and United States national security considerations involved in expected sales to each country;

(2) an estimate of the amount of credits and guaranties expected to be extended to each country under sections 23 and 24 of this Act;

(3) a list of all findings which are in effect on the date of such transmission made by the President pursuant to section 3(a)(1) of this Act, together with a full and complete justification for each such finding, explaining how sales to each country with respect to which such finding has been made will strengthen the security of the United States and promote world peace; and

(4) an arms control impact statement for each purchasing country, including (A) an analysis of the relationship between expected sales to each country and arms control efforts relating

to that country, and (B) the impact of such expected sales on the stability of the region that includes the purchasing country.

(b) Not later than thirty days following the receipt of a request made by the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives for additional information with respect to any estimate submitted pursuant to subsection (a), the President shall submit such information to such committee.

(c) The President shall make every effort to submit all of the information required by this section wholly in unclassified form. In the event the President submits any such information in classified form, he shall submit such classified information in an addendum and shall also submit simultaneously a detailed summary, in unclassified form, of such classified information.

Chapter 3—MILITARY EXPORT CONTROLS

SEC. 31. AUTHORIZATION AND AGGREGATE CEILING ON FOREIGN MILITARY SALES CREDITS.—(a) There is hereby authorized to be appropriated to the President to carry out this Act not to exceed \$1,039,000,000 for the fiscal year 1976 and not to exceed \$740,000,000 for the fiscal year 1977. Unobligated balances of funds made available pursuant to this section are hereby authorized to be continued available by appropriations legislation to carry out this Act.

(b) The aggregate total of credits, or participations in credits, extended pursuant to this Act and of the principal amount of loans guaranteed pursuant to section 24(a) shall not exceed \$2,374,700,000 for the fiscal year 1976, of which not less than \$1,500,000,000 shall be available only for Israel, and shall not exceed \$2,022,100,000 for the fiscal year 1977, of which not less than \$1,000,000,000 shall be available only for Israel.

(c) Funds made available for the fiscal years 1976 and 1977 under subsection (a) of this section shall be obligated to finance the procurement of defense articles and defense services by Israel on a long-term repayment basis either by the extension of credits, without regard to the limitations contained in section 23, or by the issuance of guaranties under section 24. Repayment shall be in not less than twenty years, following a grace period of ten years on repayment of principal. Israel shall be released from one-half of its contractual liability to repay the United States Government with respect to defense articles and defense services so financed for each such year.

(d) The aggregate acquisition cost to the United States of excess defense articles ordered by the President in any fiscal year after fiscal year 1976 for delivery to foreign countries or international organizations under the authority of chapter 2 of part II of the Foreign Assistance Act of 1961 or pursuant to sales under this Act may not exceed \$100,000,000 (exclusive of ships and their on-board stores and supplies transferred in accordance with law).

SEC. 32. PROHIBITION AGAINST CERTAIN MILITARY EXPORT FINANCING BY EXPORT-IMPORT BANK.—Notwithstanding any other provision of law, no funds or borrowing authority available to the Export-Import Bank of the United States shall be used by such Bank to participate in any extension of credit in connection with any agreement to

sell defense articles and defense services entered into with any economically less developed country after June 30, 1968.

SEC. 33. REGIONAL CEILINGS ON FOREIGN MILITARY SALES.—(a) The aggregate of the total amount of military assistance pursuant to the Foreign Assistance Act of 1961, as amended, of credits, or participations in credits, financed pursuant to section 23, of the principal amount of loans guaranteed pursuant to section 24(a), shall, excluding training, not exceed \$40,000,000 in each fiscal year for African countries.

(b) The President may waive the limitations of this section when he determines it to be important to the security of the United States and promptly so reports to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

(c) * * * [Repealed—1973]

SEC. 34. FOREIGN MILITARY SALES CREDIT STANDARDS.—The President shall establish standards and criteria for credit and guaranty transactions under sections 23 and 24 in accordance with the foreign, national security, and financial policies of the United States.

SEC. 35. FOREIGN MILITARY SALES TO LESS DEVELOPED COUNTRIES.—

(a) When the President finds that any economically less developed country is diverting development assistance furnished pursuant to the Foreign Assistance Act of 1961, as amended, or sales under the Agricultural Trade Development and Assistance Act of 1954, as amended, to military expenditures, or is diverting its own resources to unnecessary military expenditures, to a degree which materially interferes with its development, such country shall be immediately ineligible for further sales and guarantees under sections 21, 22, 23, and 24, until the President is assured that such diversion will no longer take place.

(b) * * * [Repealed—1974]

SEC. 36. REPORTS ON COMMERCIAL AND GOVERNMENTAL MILITARY EXPORTS; CONGRESSIONAL ACTION.—(a) The President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate not more than thirty days after the end of each quarter an unclassified report (except that any material which was transmitted in classified form under subsection (b)(1) or (c)(1) of this section may be contained in a classified addendum to such report, and any letter of offer referred to in paragraph (1) of this subsection may be listed in such addendum unless such letter of offer has been the subject of an unclassified certification pursuant to subsection (b)(1) of this section) containing—

(1) a listing of all letters of offer to sell any major defense equipment for \$1,000,000 or more under this Act to each foreign country and international organization, by category, if such letters of offer have not been accepted or cancelled;

(2) a listing of all such letters of offer that have been accepted during the fiscal year in which such report is submitted, together with the total value of all defense articles and defense services sold to each foreign country and international organization during such fiscal year;

(3) the cumulative dollar amounts, by foreign country and international organization, of sales credit agreements under section 23 and guaranty agreements under section 24 made during the fiscal year in which such report is submitted;

(4) a numbered listing of all licenses and approvals for the export to each foreign country and international organization during such fiscal year of commercially sold major defense equipment, by category, sold for \$1,000,000 or more, together with the total value of all defense articles and defense services so licensed for each foreign country and international organization, setting forth, with respect to the listed major defense equipment—

(A) the items to be exported under the license,

(B) the quantity and contract price of each such item to be furnished, and

(C) the name and address of the ultimate user of each such item;

(5) projections of the dollar amounts, by foreign country and international organization, of cash sales expected to be made under sections 21 and 22, credits to be extended under section 23, and guaranty agreements to be made under section 24 in the quarter of the fiscal year immediately following the quarter for which such report is submitted;

(6) a projection with respect to all cash sales expected to be made and credits expected to be extended to each country and organization for the remainder of the fiscal year in which such report is transmitted;

(7) an estimate of the number of officers and employees of the United States Government and of United States civilian contract personnel present in each such country at the end of that quarter for assignments in implementation of sales and commercial exports under this Act;

(8) a description of each payment, contribution, gift, commission, or fee reported to the Secretary of State under section 39, including (A) the name of the person who made such payment, contribution, gift, commission, or fee; (B) the name of any sales agent or other person to whom such payment, contribution, gift, commission, or fee was paid; (C) the date and amount of such payment, contribution, gift, commission, or fee; (D) a description of the sale in connection with which such payment, contribution, gift, commission, or fee was paid; and (E) the identification of any business information considered confidential by the person submitting it which is included in the report; and

(9) an analysis and description of the services being performed by officers and employees of the United States Government under section 21(a) of this Act, including the number of personnel so employed.

For each letter of offer to sell under paragraphs (1) and (2), the report shall specify (i) the foreign country or international organization to which the defense article or service is offered or was sold, as the case may be; (ii) the dollar amount of the offer to sell or the sale and the number of defense articles offered or sold, as the case may be; (iii) a description of the defense article or service offered or sold, as the case may be; and (iv) the United States Armed Forces or other agency of the United States which is making the offer to sell or the sale, as the case may be.

(b) (1) In the case of any letter of offer to sell any defense articles or services under this Act for \$25,000,000 or more, or any major

defense equipment for \$7,000,000 or more, before such letter of offer is issued, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification with respect to such offer to sell containing the information specified in clauses (i) through (iv) of subsection (a) and a description, containing the information specified in paragraph (8) of subsection (a), of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such letter of offer. In addition, the President shall, upon the request of such committee or the Committee on International Relations of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request—

(A) a detailed description of the defense articles or services to be offered, including a brief description of the capabilities of any defense article to be offered;

(B) an estimate of the number of officers and employees of the United States Government and of United States civilian contract personnel expected to be needed in such country to carry out the proposed sale;

(C) the name of each contractor expected to provide the defense article or defense service proposed to be sold (if known on the date of transmittal of such statement);

(D) an analysis of the arms control impact pertinent to such offer to sell, prepared in consultation with the Secretary of Defense;

(E) the reasons why the foreign country or international organization to which the sale is proposed to be made needs the defense articles or services which are the subject of such sale and a description of how such country or organization intends to use such defense articles or services;

(F) an analysis by the President of the impact of the proposed sale on the military stocks and the military preparedness of the United States;

(G) the reasons why the proposed sale is in the national interest of the United States;

(H) an analysis by the President of the impact of the proposed sale on the military capabilities of the foreign country or international organization to which such sale would be made;

(I) an analysis by the President of how the proposed sale would affect the relative military strengths of countries in the region to which the defense articles or services which are the subject of such sale would be delivered and whether other countries in the region have comparable kinds and amounts of defense articles or services;

(J) an estimate of the levels of trained personnel and maintenance facilities of the foreign country or international organization to which the sale would be made which are needed and available to utilize effectively the defense articles or services proposed to be sold;

(K) an analysis of the extent to which comparable kinds and amounts of defense articles or services are available from other countries;

(L) an analysis of the impact of the proposed sale on United States relations with the countries in the region to which the defense articles or services which are the subject of such sale would be delivered; and

(M) a detailed description of any agreement proposed to be entered into by the United States for the purchase or acquisition by the United States of defense articles, services, or equipment, or other articles, services, or equipment of the foreign country or international organization in connection with, or as consideration for, such letter of offer, including an analysis of the impact of such proposed agreement upon United States business concerns which might otherwise have provided such articles, services, or equipment to the United States, an estimate of the costs to be incurred by the United States in connection with such agreement compared with costs which would otherwise have been incurred, an estimate of the economic impact and unemployment which would result from entering into such proposed agreement, and an analysis of whether such costs and such domestic economic impact justify entering into such proposed agreement.

A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (ii) and the details of the description specified in clause (iii) of subsection (a) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States. The letter of offer shall not be issued if the Congress, within thirty calendar days after receiving such certification, adopts a concurrent resolution stating that it objects to the proposed sale, unless the President states in his certification that an emergency exists which requires such sale in the national security interests of the United States.

(2) Any such resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(3) For the purpose of expediting the consideration and adoption of concurrent resolutions under this subsection, a motion to proceed to the consideration of any such resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(c) In the case of an application by a person (other than with regard to a sale under section 21 or section 22 of this Act) for a license for the export of any major defense equipment sold under a contract in the amount of \$7,000,000 or more or of defense articles or defense services sold under a contract in the amount of \$25,000,000 or more, not less than 30 days before issuing such license the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate an unclassified numbered certification with respect to such application specifying (1) the foreign country or international organization to which such export will be made, (2) the dollar amount of the items to be exported, and (3) a description of the items to be exported. In addition, the President shall, upon the request of such committee or the Committee on International Relations of the House of

Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request, a description of the capabilities of the items to be exported, an estimate of the total number of United States personnel expected to be needed in the foreign country concerned in connection with the items to be exported and an analysis of the arms control impact pertinent to such application, prepared in consultation with the Secretary of Defense. A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in paragraph (2) and the details of the description specified in paragraph (3) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States.

(d) In the case of an approval under section 38 of this Act of a United States commercial technical assistance or manufacturing licensing agreement for or in a country not a member of the North Atlantic Treaty Organization which involves the manufacture abroad of any item of significant combat equipment on the United States Munitions List, before such approval is given, the President shall submit a certification with respect to such proposed commercial agreement in a manner similar to the certification required under subsection (c) containing comparable information, except that the last sentence of such subsection shall not apply to certifications submitted pursuant to this subsection.

SEC. 37. FISCAL PROVISIONS RELATING TO FOREIGN MILITARY SALES CREDITS.—(a) Cash payments received under sections 21 and 22 and advances received under section 23 shall be available solely for payments to suppliers (including the military departments) and refunds to purchasers and shall not be available for financing credits and guaranties.

(b) Amounts received from foreign governments and international organizations as repayments for credits extended pursuant to section 23, amounts received from the disposition of instruments evidencing indebtedness under section 24(b) (excluding such portion of the sales proceeds as may be required at the time of disposition to be obligated as a reserve for payment of claims under guaranties issued pursuant to section 24(b), which sums are made available for such obligations), and other collections (including fees and interest) shall be transferred to the miscellaneous receipts of the Treasury.

SEC. 38. CONTROL OF ARMS EXPORTS AND IMPORTS.—(a) (1) In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

(2) Decisions on issuing export licenses under this section shall be made in coordination with the Director of the United States Arms

Control and Disarmament Agency and shall take into account the Director's opinion as to whether the export of an article will contribute to an arms race, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.

(b) (1) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a) (1) shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State or local law enforcement agency) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance or sales program of the United States, whether or not enhanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(2) Except as otherwise specifically provided in regulations issued under subsection (a) (1), no defense articles or defense services designated by the President under subsection (a) (1) may be exported or imported without a license for such export or import, issued in accordance with this Act and regulations issued under this Act, except that no license shall be required for exports or imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(3) No license may be issued under this Act for the export of any major defense equipment sold under a contract in the amount of \$25,000,000 or more to any foreign country which is not a member of the North Atlantic Treaty Organization unless such major defense equipment was sold under this Act.

(c) Any person who willfully violates any provision of this section or section 39, or any rule or regulation issued under either section, or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$100,000 or imprisoned not more than two years, or both.

(d) This section applies to and within the Canal Zone.

(e) In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and

officials by sections 6 (c), (d), (e), and (f) and 7 (a) and (c) of the Export Administration Act of 1969, subject to the same terms and conditions as are applicable to such powers under such Act. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress.

SEC. 39. FEES OF MILITARY SALES AGENTS AND OTHER PAYMENTS.—(a) In accordance with such regulations as he may prescribe, the Secretary of State shall require adequate and timely reporting on political contributions, gifts, commissions and fees paid, or offered or agreed to be paid, by any person in connection with—

(1) sales of defense articles or defense services under section 22 of this Act; or

(2) commercial sales of defense articles or defense services licensed or approved under section 38 of this Act;

to or for the armed forces of a foreign country or international organization in order to solicit, promote, or otherwise to secure the conclusion of such sales. Such regulations shall specify the amounts and the kinds of payments, offers, and agreements to be reported, and the form and timing of reports, and shall require reports on the names of sales agents and other persons receiving such payments. The Secretary of State shall by regulation require such recordkeeping as he determines is necessary.

(b) The President may, by regulation, prohibit, limit, or prescribe conditions with respect to such contributions, gifts, commissions, and fees as he determines will be in furtherance of the purposes of this Act.

(c) No such contribution, gift, commission, or fee may be included, in whole or in part, in the amount paid under any procurement contract entered into under section 22 of this Act, unless the amount thereof is reasonable, allocable to such contract, and not made to a person who has solicited, promoted, or otherwise secured such sale, or has held himself out as being able to do so, through improper influence. For the purposes of this section, "improper influence" means influence, direct or indirect, which induces or attempts to induce consideration or action by any employee or officer of a purchasing foreign government or international organization with respect to such purchase on any basis other than such consideration of merit as are involved in comparable United States procurements.

(d) (1) All information reported to the Secretary of State and all records maintained by any person pursuant to regulations prescribed under this section shall be available, upon request, to any standing committee of the Congress or any subcommittee thereof and to any agency of the United States Government authorized by law to have access to the books and records of the person required to submit reports or to maintain records under this section.

(2) Access by an agency of the United States Government to records maintained under this section shall be on the same terms and conditions which govern the access by such agency to the books and records of the person concerned.

Chapter 4—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS

SEC. 41. EFFECTIVE DATE.—This Act shall take effect on July 1, 1968.

SEC. 42. GENERAL PROVISIONS.—(a) In carrying out this Act, special emphasis shall be placed on procurement in the United States, but, subject to the provisions of subsection (b) of this section, consideration shall also be given to coproduction or licensed production outside the United States of defense articles of United States origin when such production best serves the foreign policy, national security, and economy of the United States. In evaluating any sale proposed to be made pursuant to this Act, there shall be taken into consideration (1) the extent to which the proposed sale damages or infringes upon licensing arrangements whereby United States entities have granted licenses for the manufacture of the defense articles selected by the purchasing country to entities located in friendly foreign countries, which licenses result in financial returns to the United States, (2) the portion of the defense articles so manufactured which is of United States origin, and (3) in coordination with the Director of the United States Arms Control and Disarmament Agency, the Director's opinion as to the extent to which such sale might contribute to an arms race, or increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.

(b) No credit sale shall be extended under section 23, and no guarantee shall be issued under section 24, in any case involving coproduction or licensed, production outside the United States of any defense article of United States origin unless the Secretary of State shall, in advance of any such transaction, advise the appropriate committees of the Congress and furnish the Speaker of the House of Representatives and the President of the Senate with full information regarding the proposed transaction, including, but not limited to, a description of the particular defense article or articles which would be produced under license or coproduced outside the United States, the estimated value of such production or coproduction, and the probable impact of the proposed transaction on employment and production within the United States.

(c) Funds made available under this Act may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States.

(d) (1) With respect to sales and guaranties under sections 21, 22, 23, and 24, the Secretary of Defense shall, under the direction of the President, have primary responsibility for—

(A) the determination of military end-item requirements;

(B) the procurement of military equipment in a manner which permits its integration with service programs;

(C) the supervision of the training of foreign military personnel;

(D) the movement and delivery of military end-items; and

(E) within the Department of Defense, the performance of any other functions with respect to sales and guaranties.

(2) The establishment of priorities in the procurement, delivery, and allocation of military equipment shall, under the direction of the President, be determined by the Secretary of Defense.

(e)(1) Each contract for sale entered into under sections 21 and 22 of this Act shall provide that such contract may be canceled in whole or in part, or its execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.

(2)(A) Each export license issued under section 38 of this Act shall provide that such license may be revoked, suspended, or amended by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable.

(B) Nothing in this paragraph may be construed as limiting the regulatory authority of the President under this Act.

(3) There are authorized to be appropriated from time to time such sums as may be necessary (A) to refund moneys received from purchasers under contracts of sale entered into under sections 21 and 22 of this Act that are canceled or suspended under this subsection to the extent such moneys have previously been disbursed to private contractors and United States Government agencies for work in progress, and (B) to pay such damages and costs that accrue from the corresponding cancellation or suspension of the existing procurement contracts or United States Government agency work orders involved.

(f) The President shall, to the maximum extent possible and consistent with the purposes of this Act, use civilian contract personnel in any foreign country to perform defense services sold under this Act.

SEC. 43. ADMINISTRATIVE EXPENSES.—(a) Funds made available under other law for the operations of United States Government agencies carrying out functions under this Act shall be available for the administrative expenses incurred by such agencies under this Act.

(b) Administrative expenses incurred by any department or agency of the United States Government (including any mission or group) in carrying out functions under this Act which are primarily for the benefit of any foreign country shall be fully reimbursed from amounts received for sales under sections 21 and 22.

SEC. 44. STATUTORY CONSTRUCTION.—No provision of this Act shall be construed as modifying in any way the provisions of the Atomic Energy Act of 1954, as amended, or section 7307 of title 10 of the United States Code.

SEC. 45. STATUTES REPEALED AND AMENDED.—(a) Sections 521, 522, 523, 524(b)(3), 525, 634(g), and 640 of the Foreign Assistance Act of 1961, as amended, are hereby repealed.

(b) Part III of the Foreign Assistance Act of 1961, as amended, is amended as follows:

(1) Section 622(b) is amended by striking out "or sales".

(2) Section 622(c) is amended by striking out "and sales" and "or sales".

(3) Section 632(d) is amended by striking out "sections 506, 522, and 523," in the first sentence and inserting in lieu thereof "section 506".

(4) Section 634(d) is amended by inserting "or any other" between "under this" and "Act" in the fourth sentence.

(5) Section 644(m) is amended by striking out "and sales" in the first sentence of the paragraph following numbered paragraph (3).

(c) References in law to the provisions of law repealed by subsection (a) of this section shall hereafter be deemed to be references to this Act or appropriate provisions of this Act. Except for the laws specified in section 44, no other provision of law shall be deemed to apply to this Act unless it refers specifically to this Act or refers generally to sales of defense articles and defense services under any Act.

SEC. 46. SAVING PROVISIONS.—Except as may be expressly provided to the contrary in this Act, all determinations, authorizations, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of any provision of law repealed by section 45(a) shall continue in full force and effect until modified by appropriate authority.

SEC 47. DEFINITIONS.—For purposes of this Act, the term—

(1) "excess defense article" has the meaning provided by section 644(g) of the Foreign Assistance Act of 1961;

(2) "value" means, in the case of an excess defense article, not less than the greater of—

(A) the gross cost incurred by the United States Government in repairing, rehabilitating, or modifying such article, plus the scrap value; or

(B) the market value, if ascertainable;

(3) "defense article", except as provided in paragraph (7) of this section, includes—

(A) any weapon, weapons system, munition, aircraft, vessel, boat, or other implement of war,

(B) any property, installation, commodity, material, equipment, supply, or goods used for the purposes of making military sales,

(C) any machinery, facility, tool, material, supply, or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation, or use of any article listed in this paragraph, and

(D) any component or part of any article listed in this paragraph,

but does include merchant vessels or (as defined by the Atomic Energy Act of 1954) source material, byproduct material, special nuclear material, production facilities, utilization facilities, or atomic weapons or articles involving Restricted Data;

(4) "defense service", except as provided in paragraph (7) of this section, includes any service, test, inspection, repair, training, publication, technical or other assistance, or defense information (as defined in section 644(e) of the Foreign Assistance Act of 1961), used for the purposes of making military sales:

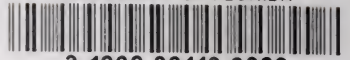
(5) "training" includes formal or informal instruction of foreign students in the United States or overseas by officers or employees of the United States, contract technicians, or contractors (including instruction at civilian institutions), or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice to foreign military units and forces;

(6) "major defense equipment" means any item of significant combat equipment on the United States Munitions List having a non-recurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000; and

(7) "defense articles and defense services" means, with respect to commercial exports subject to the provisions of section 38 of this Act, those items designated by the President pursuant to subsection (a) (1) of such section.



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